

HOUSE BILL 2792

By Johnson G

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 13; Title 40 and Title 68, Chapter 10, relative to the HIV Modernization Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "HIV Modernization Act."

SECTION 2. Tennessee Code Annotated, Section 39-13-109, is amended by deleting the section in its entirety and substituting instead the following:

**39-13-109. Intentional transmission of an infectious or communicable disease.**

(a) A person commits the offense of intentional transmission of an infectious or communicable disease when the person knows that the person is infected with an infectious or communicable disease and knowingly:

(1) Acts with the specific intent to transmit the disease to another person and intentionally engages in conduct that poses a substantial risk of transmission to that other person; and

(2) The person actually transmits the infectious or communicable disease to that other person.

(b) Becoming pregnant while infected with an infectious or communicable disease, continuing a pregnancy while infected with an infectious or communicable disease, and declining treatment for an infectious or communicable disease during pregnancy is not an offense under this section.

(c) A person who knows that the person is infected with an infectious or communicable disease has not acted with intent to transmit an infectious or communicable disease if that person has taken reasonable action to reduce the risk of

transmission of the infectious or communicable disease or attempted to reduce the risk of transmission of the infectious or communicable disease.

(d) As used in this section:

(1) "Action to reduce the risk of transmission" means the use of any method, device, behavior, or activity that measurably limits or reduces the risk of transmission of an infectious or communicable disease, including, but not limited to, the use of a condom, barrier protection, or prophylactic device; the use of medical treatments scientifically known to reduce the risk of transmission of the infectious or communicable disease; or other conduct that is known to reduce the risk of transmission;

(2) "Infectious or communicable disease" means a non-airborne disease spread from person to person that is fatal or causes disabling long-term consequences in the absence of lifelong treatment and management; and

(3) "Substantial risk of transmission" means a reasonable likelihood of disease transmission to another person as proven by competent medical or scientific evidence. Conduct that competent medical or scientific evidence has proven to pose a low or negligible risk of transmission is not conduct posing a substantial risk of transmission.

(e)

(1) The medical records, medications, prescriptions, or medical devices of the defendant are not admissible as evidence to prove the specific intent required under this section in the absence of the defendant's stated intent in the medical record to do specific harm to another person.

(2) Surveillance reports and records maintained by state and local health officials must not be subpoenaed or released for the purpose of establishing the specific intent required under this section.

(3) A court shall take judicial notice of any fact establishing an element of the offense upon the defendant's motion or stipulation.

(f)

(1) Intentional transmission of an infectious or communicable disease is a Class A misdemeanor.

(2) Attempted intentional transmission of an infectious or communicable disease is a Class B misdemeanor.

(g) Prior to sentencing, a defendant must be assessed for placement in a community-based program that provides counseling, supervision, and education.

SECTION 3. Tennessee Code Annotated, Section 39-13-516, is amended by deleting the section in its entirety.

SECTION 4. Tennessee Code Annotated, Section 40-32-101(a)(1), is amended by adding the following new subdivision:

(G) All public records of a person charged with or convicted of a misdemeanor or a felony under § 39-13-109 committed prior to July 1, 2022, or a felony under § 39-13-516 as it existed prior to July 1, 2022, must, upon petition by that person to the court having jurisdiction in the previous action, be removed and destroyed without cost to the person.

SECTION 5. Tennessee Code Annotated, Section 40-35-114, is amended by deleting subsection (21) in its entirety.

SECTION 6. Tennessee Code Annotated, Section 40-39-202, is amended by deleting subdivisions (20)(A)(iii), (31)(N), and (31)(X) in their entireties.

SECTION 7. Tennessee Code Annotated, Section 40-39-218, is amended by deleting the section in its entirety and substituting instead the following:

**40-39-218. Termination of registration requirements for certain offenses.**

(a) A person who was mandated to comply with the requirements of this part, based solely upon a conviction prior to July 1, 2022, for criminal exposure to HIV under § 39-13-109 or for a felony conviction of aggravated prostitution under of § 39-13-516 as it existed prior to July 1, 2022, may petition the sentencing court for termination of the registration requirements.

(b) Upon receiving a petition, the court shall, at least thirty (30) days prior to a hearing on the petition, notify the office of the district attorney general responsible for prosecuting the person of the person's petition for release from the registration requirements. Upon being notified, the district attorney general shall conduct a criminal history check on the person to determine if the person has been convicted of a sexual offense or violent sexual offense other than criminal exposure to HIV under § 39-13-109 or aggravated prostitution under § 39-13-516 as it existed prior to July 1, 2022, during the period the person was required to comply with the requirements of this part. The district attorney general shall report the results of the criminal history check to the court, together with any other comments the district attorney general may have concerning the person's petition for release. The district attorney general may also appear and testify at the hearing in lieu of, or in addition to, submitting written comments.

(c)

(1) If the report of the district attorney general indicates that the petitioner has been convicted of a sexual offense or violent sexual offense other than criminal exposure to HIV under § 39-13-109 or aggravated prostitution under § 39-13-516 as it existed prior to July 1, 2022, while mandated to comply with the

requirements of this part, then the court shall deny the petition without conducting a hearing.

(2) If the report of the district attorney general indicates that the petitioner has not been convicted of a sexual offense or violent sexual offense other than criminal exposure to HIV under § 39-13-109 or aggravated prostitution under the provisions of § 39-13-516 as it existed prior to July 1, 2022, then the court shall grant the petition.

(d) Upon the court's order granting the petition, the petitioner shall file a request for termination of registration requirements with the Tennessee bureau of investigation headquarters in Nashville, pursuant to § 40-39-207.

SECTION 8. Tennessee Code Annotated, Section 68-10-107, is amended by deleting the section in its entirety.

SECTION 9. Tennessee Code Annotated, Section 39-13-521(e), is amended by deleting the language:

For the sole purpose of determining whether there is probable cause to prosecute a person for aggravated prostitution under § 39-13-516, the district attorney general may view the record, notwithstanding subdivision (b)(2). The district attorney general shall file a written, signed request with the court stating the reason the court should grant the district attorney general permission to view the record. If the test results indicate the defendant is infected with HIV, then the district attorney general may use the results of the test to prosecute the person for aggravated prostitution.

SECTION 10. Tennessee Code Annotated, Section 40-17-124(a), is amended by deleting the language "39-13-516" wherever it appears and substituting instead "39-13-515".

SECTION 11. Tennessee Code Annotated, Section 40-35-313, is amended by deleting subdivision (a)(1)(B)(ii)(a) in its entirety.

SECTION 12. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 13. This act takes effect July 1, 2022, the public welfare requiring it.